

## **Sexual Harassment**

The NCK Tech (the College) Board of Trustees is committed to providing a positive and productive working and learning environment, free from discrimination on the basis of sex, including sexual harassment. The College does not discriminate on the basis of sex in admissions, employment, or the educational programs or activities it operates and is prohibited by Title IX from engaging in such discrimination. Discrimination on the basis of sex, including sexual harassment, will not be tolerated at the college. Discrimination on the basis of sex of employees or students of the College by board members, administrators, licensed and classified personnel, students, vendors, and any others having business or other contact with the College is strictly prohibited.

Sexual harassment is unlawful discrimination on the basis of sex under Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, and the Kansas Act Against Discrimination. All forms of sexual harassment are prohibited at the college, on college property, and at all college-sponsored activities, programs, or events within the United States.

It shall be a violation of this policy for any student, employee, or third party (visitor, vendor, etc.) to sexually harass any student, employee, or other individual associated with the college. It shall further be a violation for any employee to discourage a student or another employee from filing a complaint, or to fail to refer for investigation, any complaint lodged under the provisions of this policy. Violation of this policy by any employee may result in disciplinary action, up to and including termination.

Sexual harassment shall include conduct on the basis of sex involving one or more of the following: (1) A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcomed sexual conduct; (2) unwelcomed conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking.

Sexual harassment may result from verbal or physical conduct or written or graphic material. Sexual harassment may include but is not limited to: verbal harassment or abuse of a sexual nature; pressure for sexual activity; repeated remarks to a person with sexual or demeaning implication; unwelcome touching; or suggesting or demanding sexual involvement accompanied by implied or explicit threats concerning an employee's job status.

The college encourages all victims of sexual harassment and persons with knowledge of such harassment to report the harassment immediately. Complaints of sexual harassment will be promptly investigated and resolved. Any person may make a verbal or written report of sex discrimination by any means and at any time.

Dr. Corey Isbell, (Vice President of Student and Instructional Services, 3033 Hwy 24, Beloit, KS, 67420, [cisbell@ncktc.edu](mailto:cisbell@ncktc.edu), 785-275-2028) has been designated to coordinate compliance with nondiscrimination requirements contained in Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1967, and the Kansas Act Against Discrimination. Information concerning the provisions of these Acts, and the rights provided thereunder, are available from the Title IX Coordinator.

Inquiries about the application of Title IX to the college may be referred to the Title IX Coordinator; to the Assistant Secretary for Civil Rights at the U.S. Department of Education, Office of Civil Rights, 400 Maryland Avenue, SW, Washington D.C. 20202-1100, (800) 421-3481, or at [OCR@ed.gov](mailto:OCR@ed.gov); or both.

### **Response to Harassment Complaints**

The college takes all reports of sexual harassment seriously and will respond purposefully and promptly to every report of discrimination based on sex, including sexual harassment, of which the college has actual knowledge. Employees or students who believe they have been subjected to sexual harassment should discuss the concern with the Title IX Coordinator or any college administrator. All employees receiving reports of alleged sexual harassment shall notify the Title IX Coordinator. If the Title IX Coordinator or a college administrator is the alleged harasser, the employee or student should discuss the problem with the College President.

## **Definitions**

The following definitions apply to the college in responding to complaints of sexual discrimination including sexual harassment as defined by Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, and the Kansas Act Against Discrimination.

The “complainant” means an individual who is alleged to be a victim of conduct that could constitute sexual harassment.

“Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved.

The “decision-maker” reviews all the evidence and prepares an impartial written responsibility determination as to whether the alleged conduct occurred and provides an opportunity for the parties and their representatives to prepare written questions to be answered by the other party. The decision-maker shall not be the Title IX Coordinator or investigator.

“Domestic violence” includes crimes of violence committed by a person who is a current or former spouse, partner, person with whom the victim shares a child, or who is or has cohabited with the victim as a spouse or partner, by a person similarly situated to a spouse of the victim under Kansas or applicable federal law, or by any other person against an adult or youth victim having protection from such person’s acts by Kansas or applicable federal law.

A “formal complaint” means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the college investigate the allegation of sexual harassment.

The “investigator” is the person who carries out the investigation after the formal complaint is filed and conducts interviews of the witnesses, collects and documents evidence, and drafts an investigative report.

A “respondent” is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

“Sexual assault” means an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or to suffer substantial emotional distress.

The “Title IX Coordinator” is the individual designated by the college who has responsibility to coordinate compliance with Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, and the Kansas Act Against Discrimination. The Title IX Coordinator’s responsibilities include, but are not limited to: developing materials and ensuring professional development occurs for staff involved in Title IX compliance; creating systems to centralize records; gathering relevant data; contacting the complainant (and/or parents or guardians, if applicable) once the college has actual knowledge of alleged sexual harassment; coordinating the implementation of supportive measures; signing a formal complaint to initiate a grievance process; and ensuring any remedies are implemented.

The Title IX Coordinator, any investigator, decision-maker, or any person who facilitates an informal resolution process shall not have a conflict of interest or bias for or against the complainant or respondent. These individuals shall receive training on the definition of sexual harassment; the scope of the education program and activities; how to conduct an investigation, including appeals and informal resolution processes; and how to serve impartially, including by avoiding prejudgment of the facts, conflicts of interest, and bias. Decision-makers shall receive training on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant. Investigators shall receive training on issues of relevance of questions and evidence in order for them to create investigative reports that fairly summarize relevant evidence.

Any employee who witnesses an act of sexual harassment or receives a complaint of harassment from another employee or a student shall report the complaint to their immediate supervisor or Title IX Coordinator. Employees who fail to report complaints or incidents of sexual harassment to appropriate college officials may face disciplinary action. College officials who fail to investigate and take appropriate corrective action in response to complaints of sexual harassment may also face disciplinary action.

Complaints received will be investigated to determine whether, under the totality of the circumstances, the alleged behavior constitutes sexual harassment under the definition outlined above. Unacceptable conduct may or may not constitute sexual harassment, depending on the nature of the conduct and its severity, pervasiveness, and persistence. Behaviors which are unacceptable but do not constitute harassment may also result in employee or student discipline.

If discrimination or harassment has occurred, the college will take prompt, remedial action to stop it and prevent its reoccurrence.

The Title IX Coordinator shall promptly respond in a purposeful way to any reports of sexual discrimination including sexual harassment of which the college has actual knowledge as follows:

- Contact the complainant within 10 business days and discuss the availability of supportive measures, with or without the filing of a formal complaint, and consider the complainant's wishes as to supportive measures; and
- Inform the complainant of the right to a formal complaint investigation consistent with Title IX and the informal resolution process.

#### **Supportive Measures**

The college will treat the complainant and respondent equitably by offering supportive measures. These non-disciplinary and non-punitive measures will be offered as appropriate, as reasonably available, and without cost to the complainant or the respondent. Supportive measures are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party. "Supportive Measures" shall include, but not be limited to, measures designed to protect the safety of all parties, to protect the college's educational environment, or to deter sexual harassment. These measures may include: counseling; extensions of deadlines or course-related adjustments; modifications of work or class schedule; escort services; mutual restrictions on contact between the parties; changes in work locations; leaves of absence; increased security and monitoring; and other similar measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

#### **The Formal Complaint**

No investigation of alleged sexual harassment may occur until after a formal complaint has been filed.

A formal complaint is a document filed by the complainant or signed by the Title IX Coordinator alleging sexual harassment and requesting an investigation. The procedures for filing a formal complaint are as follows:

- At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the college concerning which the formal complaint is filed.
- A formal complaint should be filed in writing and contain the name and address of the person filing the complaint. The complaint should briefly describe the alleged violation. Filing of the complaint with the Title IX Coordinator may be done in person, by mail, or by email. If an individual does not wish to file a written complaint, and the matter has not been adequately resolved, the Title IX Coordinator may initiate the complaint. Forms for filing written complaints are available on each college campus and on the College website.
- A complaint should be filed as soon as possible after the conduct occurs, but not later than 180 calendar days after the complainant becomes aware of the alleged violation, unless the conduct forming the basis for the complaint is ongoing.
- An investigation shall follow the filing of the complaint. If the complaint is against the College President, the Board shall appoint an investigating officer. In other instances, the investigation shall

be conducted by a qualified individual designated by the Title IX Coordinator or another individual appointed by the Board. The investigation shall be thorough. All interested persons, including the complainant and the respondent, will be afforded an opportunity to submit written or oral evidence relevant to the complaint.

#### **Formal Complaint Notice Requirements**

Upon filing of a formal complaint, the college shall provide written notice to the known parties including:

- Notice of the allegations of sexual harassment including sufficient details to prepare a response before any initial interview including:
  - the identities of the parties involved, if known;
  - the conduct allegedly constituting sexual harassment; and
  - the date and location of the alleged incident, if known.
- The college's investigation procedures, including any informal resolution process;
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made by the decision-maker at the conclusion of the investigation;
- Notice to the parties they may have an advisor of their choice and may inspect and review any evidence; and
- Notice to the parties of any provision in the College's code of conduct or policy that prohibits knowingly making false statements or knowingly submitting false information.

If, in the course of an investigation, the investigator decides to investigate allegations about the complainant or respondent that are not included in the notice initially provided, notice of the additional allegations shall be provided to known parties.

#### **Formal Complaint Investigation Procedures**

To ensure a complete and thorough investigation and to protect the parties, the investigator shall:

- Ensure that the preponderance of the evidence burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the college and not the parties;
- Provide an equal opportunity for the parties to present witnesses and evidence;
- Not restrict either party's ability to discuss the allegations under investigation or to gather and present relevant evidence;
- Allow the parties to be accompanied with an advisor of the party's choice;
- Provide written notice of the date, time, location, participants, and purpose of any interview, meeting, or hearing at which a party is expected to participate;
- Provide the parties equal access to review all the evidence collected which is directly related to the allegations raised in a formal complaint, including the investigative report, and the opportunity to respond to that evidence before a determination is made;
- Be impartial and objectively evaluate all relevant evidence without relying on sex stereotypes;
- Not have conflicts of interest or bias for or against complainants or respondent;
- Not make credibility determinations based on the individual's status as complainant, respondent, or witness.

#### **Formal Complaint Investigation Report**

The investigator shall prepare an investigative report that fairly summarizes relevant evidence and share the report with the parties and their advisors for review and response within 60 days of the initiation of the formal complaint. If the investigation requires longer than 60 days, both parties will be notified.

Before completing the investigative report, the investigator must send each party and their advisors the investigative report for review and allow the parties 10 days to submit a written response for the investigator's consideration.

The investigator's written report shall include an objective evaluation of all relevant evidence using a preponderance of the evidence standard to determine responsibility.

### **Hearing and Decision-Maker's Determination**

Following the investigation, a live hearing will take place. Hearing procedures are as follows:

- Both the complainant and the respondent may have an advisor present. The advisor may be an attorney, but doesn't have to be. If either the complainant or respondent do not have access to an advisor, the college will provide one at no cost.
- The decision maker of the hearing must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow up questions.
- Cross-examination must be conducted directly, orally, and in real time by the party's advisor of choice, never by the party personally.
- At the request of either party, the college must provide for the live hearing to occur with the parties located in separate rooms, with technology that enables all parties and the decision maker to simultaneously see and hear the witness answering questions.
- The decision maker has the responsibility to determine the relevancy of the questions and explain in real time any decision not to permit a question.
- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- After the hearing, the decision maker must issue a written determination, within 10 days, of responsibility based on a preponderance of evidence. If written determination cannot take place within 10 days, both parties will be notified. The written determination must include:
  - Identification of the allegations at issue
  - Description of the procedural steps taken throughout the case
  - Findings of fact supporting the determination
  - Conclusions regarding application of the Title IX policy
  - A statement and rationale as to the determination for each allegation
  - A statement of any disciplinary sanctions and whether any remedies will be provided to the complainant
  - A description of the procedures and permissible grounds for appeal
- The college must make an audio or video recording of the hearing, or a transcript, and make it available to the parties for inspection and review.
- A copy of the written determination shall be provided to both parties simultaneously.

The range of disciplinary sanctions and remedies may include, but may not be limited to, supportive measures, short term suspension, long term suspension, expulsion for students, and/or termination for employees. The Title IX Coordinator is responsible for the effective implementation of sanctions and remedies. If the investigation results in a recommendation that a student be suspended or expelled, procedures outlined in Board policy and state law governing student suspension and expulsion will be followed.

If the investigation results in a recommendation that an employee be suspended with or without pay or terminated, procedures outlined in Board policy, the negotiated agreement (as applicable), and/or state law will be followed.

Records relating to complaints filed and their resolution shall be maintained by the Title IX Coordinator for seven years.

The decision becomes final on the date the parties receive the results of an appeal, if any appeal is filed, or on the date the opportunity for an appeal expires.

### **Appeals**

The complainant or respondent may appeal the decision-maker's determination, within 10 days, regarding responsibility or a dismissal of a formal complaint, on the following base:

- Procedural irregularity that affected the outcomes;
- New evidence that was not reasonably available at the time that could affect the outcome; and/or
- The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias against either party that affected the outcome.
- A preponderance of evidence of a conflict of interest or bias must be proven by the appellant.

The request to appeal shall be made in writing to the Title IX Coordinator within 10 days after the date of the written determination. Appeals shall be audio or video recorded and that documentation shall be kept with the case files for 7 years. Appeals shall be heard by an attorney, a hearing officer appointed by the Board, or the Board. The appeal decision-maker may not be the Title IX Coordinator, the Investigator, or the decision-maker from the original determination.

The appeal decision-maker will issue a written decision within 30 days after the appeal is filed. The appeal decision-maker will describe the result of the appeal and the rationale for the result. The appeal decision-maker shall:

- Review the evidence gathered by the investigator, the investigator's report, and the original decision-maker's determination;
- Notify both parties in writing of the filing of an appeal and give them 10 days after the appeal is filed to submit further evidence in writing;
- Not have a conflict of interest or bias for or against complainant or respondent and receive the required training;
- Issue a written decision and the rationale for the decision within 30 days after the appeal is filed;
- Describe the result of the appeal and the rationale for the result in the decision; and
- Provide the written decision simultaneously to both parties and to the Title IX Coordinator.

### **Informal Resolution Process**

At any time during the formal complaint process and prior to reaching a determination regarding responsibility, the college may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and determination of responsibility.

The informal resolution process may be facilitated by a trained educational professional, consultant, or other individual selected by the Title IX Coordinator under the following conditions:

- The parties are provided a written notice disclosing the allegations, the requirements of the informal resolution process, information on when it may preclude the parties from resuming a formal complaint arising from the same allegations;
- At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the investigation of the formal complaint and be informed of any consequences resulting from participating in the informal resolution process;
- The parties voluntarily and in writing consent to the informal resolution process; and
- The informal resolution process cannot be used to resolve allegations that an employee sexually harassed a student.

If the matter is resolved to the satisfaction of the parties, the facilitator shall document the nature of the complaint and the proposed resolution, have both parties sign the documentation and receive a copy, and forward it to the Title IX Coordinator. Within 20 days after the complaint is resolved in this manner, the Title IX Coordinator shall contact the complainant to determine if the resolution of the matter remains acceptable. If the matter is not resolved, or if the individual does not believe the resolution remains acceptable within 20 days after the informal resolution document is executed, the individual or the Title IX Coordinator may proceed with the formal complaint process.

If discrimination or harassment has occurred, the college will take prompt, remedial action to prevent its reoccurrence. The college prohibits retaliation or discrimination against any person for opposing discrimination, including harassment; for participating in the complaint process; or making a complaint, testifying, assisting, or participating in any investigation, proceeding, or appeal.

Use of this complaint procedure is not a prerequisite to the pursuit of any other remedies including the right to file a complaint with the Office for Civil Rights of the U.S. Department of Education, the Equal Employment Opportunity Commission, or the Kansas Human Rights Commission.

Initiation of a complaint of sexual harassment in good faith will not adversely affect the job security or status of an employee, nor will it affect his or her compensation. Any act of retaliation or discrimination against any person who has filed a complaint or testified, assisted, or participated in any investigation, proceeding, or hearing involving sex discrimination including sexual harassment is prohibited. Any person who retaliates is subject to immediate disciplinary action, up to and including termination of employment.

To the extent possible while still following the above procedures, confidentiality will be maintained throughout the investigation and resolution of a complaint. The desire for confidentiality must be balanced with the college's obligation to conduct a thorough investigation, to provide supportive measures to both parties, to take appropriate corrective action, and to provide due process to the complainant and the respondent.

False or malicious complaints of sexual harassment may result in corrective or disciplinary action against the complainant.

A summary of this policy and the complaint procedures including how to report or file a formal complaint of sex discrimination or sexual harassment shall be posted in each college facility, shall be published in employee handbooks, and on the college's website as directed by the Title IX Coordinator. Notification of the policy may include posting information notices, publishing in local newspapers, publishing in newspapers and magazines operated by the college, or distributing memoranda or other written communications to students and employees. In addition, the college is required to include a statement of nondiscriminatory policy in any bulletins, announcements, publications, catalogs, application forms, or other recruitment materials that are made available to participants, students, applicants, or employees.